



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-A-

DATE: AUG. 31, 2016

MOTION ON TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a registered nurse, seeks classification either as a member of the professions holding an advanced degree or as an individual of exceptional ability. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this employment-based second preference immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. We dismissed a subsequent appeal. We specifically and thoroughly discussed the Petitioner's submissions and determined that she did not establish eligibility for the underlying classification as she did not demonstrate that she is a member of the professions or that she qualifies as an individual of exceptional ability. In addition, we found that the Petitioner did not show that her proposed employment will be national in scope and that she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The matter is now before us on a motion to reconsider. Upon review, we will deny the motion.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider is based on the existing record and the petitioner may not introduce new facts or new evidence relative to his or her arguments. It contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new materials. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2). It must include specific allegations as to how we erred as a matter of fact or law and must be supported by pertinent legal authority.

The Petitioner, in her motion to reconsider, does not contend that the analysis in our previous decision was incorrect or that our finding regarding her eligibility was erroneous, nor does she cite any pertinent legal authority to that effect. Instead, she submits an almost identical brief to the one

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on appeal, presenting arguments previously discussed in our dismissal of the appeal. The motion does not overcome our decision dismissing the Petitioner's original appeal.

We also note that, in order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion must be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." The Petitioner does not submit the required statement on motion.

ORDER: The motion to reconsider is denied.

Cite as *Matter of R-A-*, ID# 18270 (AAO Aug. 31, 2016)